

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Lynchburg Division)**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 6:17-cv-00070-NKM
)	
BRUCE BOONE, <u>et al.</u> ,)	
)	
)	
)	
Defendants.)	

ANSWER OF DEFENDANT BURKE & HERBERT BANK & TRUST COMPANY

TO THE SECOND AMENDED COMPLAINT

COMES NOW Defendant Burke & Herbert Bank & Trust Company (“**Burke & Herbert**”), by counsel, and states as follows for its Answer to the Second Amended Complaint filed by Plaintiff.

1. Burke & Herbert admits the allegations contained in paragraphs 3, 7, 35, and 36.

2. Burke & Herbert lacks sufficient information or belief to admit or deny the allegations contained in paragraphs 4, 5, 6, 8, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 31, 32, 33, 34, 37 and demands strict proof thereof.

3. Paragraphs 1, and 2 state legal conclusions to which no response is required.

4. Paragraphs 10, 17, 24 and 29, are incorporating paragraphs that require no response; however, Burke & Herbert repeats its responses to all such incorporated paragraphs.

5. In response to paragraph 9, Burke & Herbert admits the subject real property is located within the jurisdiction of this Court. Burke & Herbert is without sufficient information or

belief to admit or deny the physical description of the property and its addresses, and Burke & Herbert demands strict proof thereof. The deed at Exhibit A speaks for itself.

6. Based on a title examination (the “**Title Exam**”) obtained by Burke & Herbert, the recorded deeds of trust held by Burke & Herbert are liens on the subject property that are superior in priority to the Notices of Federal Tax Lien (the “**IRS Lien Notices**”) recorded by Plaintiff for the assessments alleged in paragraphs 13 and 14.

7. In *U.S. v. Beninati*, 632 F.Supp.2d 116, 119 (D. Mass. 2009), the court held that in general, for purposes of federal law, the rule “first in time, first in right” governs priority. Under 26 U.S.C. § 6322, a federal tax lien arises at the time the tax assessment is made, but pursuant to 26 U.S.C. § 6323, federal tax liens in the case of real property must be recorded in the land records prior to a deed of trust in order to attain priority.

8. Since Burke & Herbert’s Title Exam shows no IRS Lien Notices recorded prior to the Burke & Herbert deeds of trust, and Plaintiff has not alleged that any IRS Lien Notices were recorded prior to the Burke & Herbert deeds of trust, the Court should determine that the federal tax assessments alleged in the Second Amended Complaint are inferior in priority to the deeds of trust held by Burke & Herbert.

9. Any tax sale of the subject property must be made subject to the Burke & Herbert first and second deeds of trust.

WHEREFORE, having fully answered the Complaint filed against it, Defendant Burke & Herbert Bank & Trust Company, by counsel, respectfully requests that the Complaint against it be dismissed and that it be awarded such other and further relief, including any reasonable fees and costs, as this Court deems appropriate.

Respectfully submitted,

BURKE & HERBERT BANK & TRUST COMPANY
By Counsel

Date: March 19, 2018

By: /s/ James R. Meizanis

William H. Casterline, Jr. VSB #16277

James R. Meizanis VSB #80692

Blankingship & Keith, P.C.

4020 University Drive, Suite 300

Fairfax, Virginia 22030

Phone: 703-691-1235

Fax: 703-691-3913

wcasterlinejr@bklawva.com

jmeizanis@bklawva.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon filing with the Court on March 19, 2018, a copy of the foregoing is to be served electronically via the court's CM/ECF system on those receiving electronic notice thereby and by first class mail, U.S. Postage Prepaid, to the following:

Ari D. Kunofsky
Trial Attorney
U.S. Department of Justice
555 4th St., NW, Suite 6112
Washington, D.C. 20001

/s/ James R. Meizanis
William H. Casterline, Jr. VSB #16277
James R. Meizanis VSB #80692
Blankingship & Keith, P.C.
4020 University Drive, Suite 300
Fairfax, Virginia 22030
Phone: 703-691-1235
Fax: 703-691-3913
wcasterlinejr@bklawva.com
jmeizanis@bklawva.com